

That is just one of the many political backroom plots being played out in the Senate over control of the nation's courts.

The game begins with GOP payback for the Democrats having changed the filibuster rules in 2013 to allow confirmation with a simple majority vote. That "nuclear option" broke the GOP hold on judicial nominations while Democrats still held the majority and cleared the way for 96 judges to take their seats.

Now the GOP holds the Senate majority and Republicans have slammed the lid on new judges from Obama. This makes judicial nominations a valuable point of leverage in future negotiations with the White House over budget issues, regulation and more.

And with a presidential election next year, the GOP hopes to soon have a president of its own sending over nominations, beginning January 2017. Then, there is the reality that four of the five current Supreme Court justices are over the age of 75—including Justice Anthony Kennedy, the "swing vote." Republicans have little incentive to allow Obama to put more Democrats throughout the nation's judiciary.

The extreme Republican anger at the federal courts is already a big issue in the 2016 presidential race. Last week, Sen. Ted Cruz (R-Texas), chairman of the Judiciary Committee's oversight panel for the federal courts, held a hearing titled: "With Prejudice: Supreme Court Activism and Possible Solutions." He called the hearing to show the depths of his upset with the recent decisions to uphold *ObamaCare* and grant same-sex couples the right to marry.

Cruz, a former Supreme Court law clerk, used the hearing to trash a court with a majority of five conservatives, led by a conservative—Chief Justice John Roberts—and by all measures a strongly conservative record in rulings on guns, campaign spending, and blocking Environmental Protection Agency regulation of airborne chemicals.

As a candidate for the GOP's 2016 presidential nomination, Cruz knows the high court's standing among Republican voters is low. After the *ObamaCare* and gay marriage decisions, only 18 percent of Republicans told Gallup last week that they approve of the court. Cruz set the tone for his hearing by saying he wanted to review "options the American people have to rein in judicial tyranny."

Sen. Cruz is a fan of extreme action to deal with this "tyranny." He is proposing having Supreme Court justices stand for retention election every eight years.

Former Arkansas Gov. Mike Huckabee, another candidate for the GOP presidential nomination, favors term limits.

Sen. Jeff Sessions (R-Ala.) declared during the hearing that the current court has a "foreign, unhistorical approach to law."

Between the Senate Republicans' success at clogging the judicial appointment process and the burst of harsh rhetoric, there is a growing risk of a serious erosion of the public trust in the nation's judicial system.

Obama also is playing the dangerous game. He has not nominated anyone to fill 47 of the 63 open seats on the federal bench. No doubt he feels it would be a waste of time to keep pushing good money—in this case judicial nominees—down a hole. The president does have seven judicial nominees before the Senate and three would help with the judicial emergencies.

For both liberals and conservatives, the current roadblock has consequences. According to [www.uscourts.gov](http://www.uscourts.gov), 28 federal courts have now declared "judicial emergencies" because they lack enough judges to hear pending cases.

Earlier this month, the Senate confirmed its fifth federal judge for the year, Kara

Stoll. The current Senate is so far behind they have not reached the half-way point to match the previous record low for confirmations, 12, set in President Obama's first year in office.

The number of judges confirmed during President George W. Bush's second term, higher than the current rate for Obama, is still less than the number of judges confirmed in the final two years of Presidents Reagan and Clinton.

But now that Republicans are in charge, the Bush record looks generous.

"It's ridiculous," said Sen. Patrick Leahy (D-Vt.). He chaired the Senate Judiciary Committee with the Democrats in the majority. "They are trying to politicize the courts. And it's irresponsible. I refused to do it with President Reagan. I refused to do that with President [George W.] Bush."

Can the Senate expect better results with a President Hillary Clinton or President Bernie Sanders? How about President Jeb Bush or President Donald Trump? Most likely it will be more of the same—a continuing loss of the bipartisan trust and respect that once made America's courts the gold standard of justice for the world.

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#### CONFIRM JUDGE RESTREPO

(By Carl Tobias)

Today, as in 2007, a Pennsylvania federal district court judge's unopposed nomination to the Third Circuit requires a final vote in a Senate the president's party does not control. On March 15, 2007, a Democrat Senate confirmed President George W. Bush's nomination of Pittsburgh District Judge Thomas Hardiman one week after his Judiciary Committee approval.

This precedent is one reason Senate Majority Leader Mitch McConnell, R-Ky., must schedule an immediate vote on Judge Luis Felipe Restrepo's nomination, which the committee approved on July 9. Restrepo would fill one of 28 vacancies the courts have declared judicial emergencies.

President Obama nominated the experienced, uncontroversial jurist in November on the strong bipartisan recommendation of Pennsylvania Sens. Bob Casey (D) and Pat Toomey (R). Moreover, on July 1, Third Circuit Judge Marjorie Rendell assumed senior status. This means that Judge Hardiman is one of six active Pennsylvania members on the court, which experiences two vacancies in 14 positions.

Toomey's spokesperson says that the senator has spoken directly with McConnell "to emphasize the importance of getting Judge Restrepo confirmed" but did not indicate Toomey urged a prompt vote. As Senate Minority Leader Harry Reid, D-Nev., said on July 7, if Toomey simply asked "to confirm Judge Restrepo immediately, (I'm confident) we could confirm Judge Restrepo to the Third Circuit next week."

Obama has consulted with Casey and Toomey, who have cooperated in helping to fill one Pennsylvania Third Circuit seat and 14 district court posts since 2011. They have carefully reviewed applicants and proposed excellent individuals whom Obama usually nominates.

However, the Senate slowly processes nominees. Most critical have been Republican delays of floor votes. For example, between November 2013 and late March 2014, the Eastern District faced seven openings. The many prolonged vacancies have slowed federal court litigation, requiring people and businesses to wait interminably for case resolution.

Casey and Toomey suggested Restrepo for the Eastern District, and the Senate ap-

proved him on a June 2013 voice vote. Each assumed credit for proposing Restrepo's Third Circuit nomination in November press releases. Toomey exclaimed that Restrepo would "make a superb addition to the Third Circuit," but the legislator retained his "blue slip"—which permits a nominee to proceed—from Nov. 12 until May 14, even though Casey submitted his in November. The jurist's June 10 hearing was long overdue.

At his hearing, Restrepo comprehensively and candidly answered questions and senators appeared satisfied. For example, Sen. Thom Tillis, R-N.C., who chaired the hearing, observed that Restrepo has been reversed only twice.

McConnell has not publicly stated when he would arrange a floor debate and vote. However, on June 4, he suggested he might not allow ballots for more Obama circuit nominees, although he did finally accord Kara Farnandez Stoll, a Federal Circuit candidate who had waited 10 weeks, July floor consideration.

The Third Circuit needs all its members to deliver justice, and Restrepo has languished over eight months. The Senate must confirm him before the August recess.

#### NOMINATION OBJECTION

Mr. GRASSLEY. Mr. President, I intend to object to any unanimous consent request at the present time relating to the appointment of Bradley Duane Arsenault, of FL; Bret Thomas Campbell, of TX; Karen Stone Exel, of CA; Gloria Jean Garland, of CA; Michael H. Hryshchyn, Jr., of VA; Ying X. Hsu, of CA; Stephen S. Kelley, of VA; Mary Catherine Leherr, of VA; Denise G. Manning, of VA; Paul Karlis Markovs, of MI; Scott Currie McNiven, of AZ; Hanh Ngoc Nguyen, of CA; Denise Frances O'Toole, of ME; Marisol E. Perez, of NJ; Ronald F. Savage, of NM; Adam P. Schmidt, of CT; Anna Toness, of TX; Michael J. Torreano, of FL; Nicholas John Vivio, of DC; Jamshed Zuberi, of CA as Foreign Service Officer Class Two, Consular Officer and Secretary in the Diplomatic Service of the United States of America.

I will object because, in addition to the multiple inquiries I have made that are still unanswered, I sent another letter to the State Department today and the Department has failed to confirm receipt, yet again. In addition, my staff placed multiple phone calls to Department personnel to inquire as to the status of the most recent letter. Department personnel have failed even to return phone calls.

I warned the Department that if they failed to change their ways that I would be forced to escalate the scope of my intent to object to unanimous consent requests by including Foreign Service officer candidates. My objection is not intended to question the credentials of the individuals up for appointment. However, the Department must recognize that it has an obligation to respond to congressional inquiries in a timely and reasonable manner.

#### APPROPRIATIONS

Ms. MIKULSKI. Mr. President, this month the Senate Appropriations Committee completed its work on 12 bills

to fund the government for fiscal year 2016, which begins October 1, 2015.

I congratulate Chairman COCHRAN and his subcommittee chairs for a full and open process. They worked hand in hand with me and my ranking Democratic members. But their bills are based on the postsequester levels of the Republican budget resolution. The bills reported by the committee are too spartan to meet the needs of the American people.

The difference between the Republican budget and the President's budget request is \$74 billion. That is a lot. But even with that increase, the discretionary top line will be equal to what we spent in 2010, 6 years ago.

I would like to talk about one example of the real impact of the Republican sequester level budget—failing our veterans.

Veterans deserve promises made and promises kept. Instead, the Senate fiscal year 2016 Military Construction, Veterans Affairs, and Related Agencies bill is at least \$857 million short of what is needed for veteran health care. And the House is even worse, at least \$1.4 billion below what is needed. At those levels, about 70,000 fewer veterans will receive medical care.

Despite record demand for services, our veterans are still waiting to get appointments at hospitals and clinics. In fact, the electronic wait list has grown by almost 10,000 over the past 2 months. Sequester will result in waitlists growing exponentially.

Sequester budgeting for veterans' medical care means almost 150,000 veterans living with hepatitis C will be in limbo, not receiving new, lifesaving drugs.

It is not just care that is short-changed. Sequester budgeting means hospitals and clinics continue to deteriorate. The VA has identified between \$10 billion and \$12 billion of backlogged code violations and deficiencies at hospitals and clinics across the country. In fiscal year 2013, the VA spent \$1.3 billion repairing clinics, but for fiscal year 2016 the Republican bills cut funding in half, even as the backlog grows.

Yesterday, the Republican leader stated that he did not want a government shutdown. Encouragingly, he added, "At some point we'll negotiate the way forward."

Democrats are ready. Since May, we have been asking to negotiate to eliminate sequester with a sequel to Murray-Ryan. The only way we will have shutdown, showdown, and government by self-made crisis is if the Republican majority refuses to send the President bills he can sign and instead sends bills that are too spartan or contain poison pill riders like prohibiting funding for Planned Parenthood or signature initiatives like the Affordable Care Act and climate pollution rules.

Whether it is funding our troops or keeping our promises to veterans, we can't do it without a new budget deal. Freezing Federal spending doesn't meet the growing, complex needs of the Nation.

None of us were elected to make America weaker. Yet sequester makes us weaker and sequester hollows out America.

America deserves better, but we need a new budget deal to do it. Democrats are ready to get serious and get to the table. We need to end sequester for defense with no more gimmicks and end sequester for programs not funded in the defense bill that protect our country and make it great.

#### DRIVE ACT

Ms. BALDWIN. Mr. President last week the Senate passed a multiyear surface transportation bill, the Developing a Reliable and Innovative Vision for the Economy Act, H.R. 22, referred to as the DRIVE Act. I was pleased to vote for this bipartisan bill. For the first time in 3 years, the Senate has passed a long-term surface transportation bill. Unfortunately, the House adjourned before taking up our bipartisan legislation—forcing the Senate to pass a short-term funding patch, the 34th since 2009.

I am disappointed that we were not able to get the long-term bill to the President's desk. However, I believe the Senate has laid the groundwork to make the most recent short-term extension the last for the next few years. I look forward to working with my colleagues in both houses of Congress to complete a long-term bill before the October 29 deadline, and I expect the DRIVE Act to be the baseline for those efforts.

While the DRIVE Act's most important feature is that it provides certainty to construction firms and state governments to invest in rebuilding our crumbling roads and bridges, it also includes several provisions to improve the way we move goods and people across our nation. In the last few years, I have become very concerned with the way one particular good—Bakken oil—moves through the country. The fiery explosions that accompany Bakken oil train derailments have many in Wisconsin rightfully concerned as we have unwittingly become one of the most traveled oil train routes in the country.

The DRIVE Act includes a rail safety bill that was added thanks to the leadership of Senate Commerce Committee Chairman THUNE, Ranking Member NELSON, and Senators BOOKER and WICKER. I was pleased that the bipartisan bill that passed out of committee included provisions to require a railroad liability study and comprehensive oil spill response plans. These provisions were similar to what is included in the Crude-by-Rail Safety Act, on which I worked closely with Senator CANTWELL to introduce.

While the liability study and oilspill response plans are steps in the right direction, as the bill moved to the Senate floor, I believed we needed to do more to improve rail infrastructure, transparency, and first responder prepared-

ness. That is why I was pleased to work with Environment and Public Works Ranking Member BARBARA BOXER, Commerce, Science, & Transportation Committee Chairman JOHN THUNE and Ranking Member BILL NELSON as well as Majority Leader MITCH MCCONNELL to include two sections in the bill that passed the Senate on July 30. I was able to add these sections to the substitute amendment, No. 2266, that was adopted on July 29, 2015, and the provisions were included in the final version of the bill that passed the Senate.

The first section, section 35416, would require that the Federal Railroad Administration keep on file the most recent bridge inspection report prepared by a private railroad bridge owner and provide that report to appropriate state and local officials upon request. This allows State and local officials who are responsible for public infrastructure integrity and public safety to have access to information they need to keep the public safe. The substance of this section is also contained in amendment 2538.

The second section, section 35431, addresses concerns raised by the first responder community who have had to fight for access to real-time information about hazmat trains entering their jurisdictions. Firefighters want to know in advance when hazmat trains will arrive in order to better prepare and keep their communities safe. The substance of this section is also contained in amendment 2539.

The section modified the bill's original language that only required real-time hazmat train information to go to Department of Homeland Security Fusion Centers. The centers would then provide the information to local first responders only in the event of an accident, when it is less useful. My provision requires fusion centers to provide the real-time information to State and local first responders at least 12 hours prior to a hazmat train arriving in their jurisdiction. The transmission must also include the best estimate of the train's arrival.

I believe these two sections significantly improve transparency and safety in communities along oil train routes. This is also a significant achievement for state and local organizations, who are often powerless to take action against federally regulated railroads—despite being responsible for any problems they cause. In closing, I again would like to thank Senators MCCONNELL, THUNE, NELSON, BOXER, and INHOFE for their leadership on this legislation. And I pledge to work with my colleagues in the House and Senate to pass a long-term surface transportation bill in the next three months.

#### 50TH ANNIVERSARY OF THE VOTING RIGHTS ACT OF 1965

Ms. MIKULSKI. Mr. President, today marks the 50th anniversary of one of the most important civil rights bills we have ever come together as a nation to pass: the Voting Rights Act of 1965.